

Appl. No. : 10/771,845  
Filed : February 4, 2004

### REMARKS

Applicant initially would like to thank Examiner Melissa Ryckman for the courtesies extended Applicant's representative during the phone interview held on December 19, 2007, summarized above.

By way of summary, prior to this Amendment Claims 1-7, 10-13, 15, 16 and 48 were pending in this application. Claims 1 and 10 have been amended, and Claims 49-54 have been added. In the outstanding Office Action of September 27, 2007, Claims 1-5, 7, 10, 12, 13 and 15 were rejected under 35 U.S.C. §102(e) as being anticipated by Peavey et al. (U.S. Pub. 2003/0225421). Claims 11 and 16 were rejected under 35 U.S.C. §103(a) as being unpatentable over Peavey in view of Shaw (U.S. 6,171,329).

#### **I. § 102(a) Claim Rejection**

In the outstanding Office Action of September 27, 2007, the Examiner rejected Claims 1-5, 7, 9, 10, 13 and 15 under 35 U.S.C. §102(e) as being anticipated by Peavey et al. (U.S. Pub. 2003/0225421). Applicant notes that Claim 9 has been canceled, and presumes that Claim 48 is included as part of the Examiner's rejection. As discussed during the Interview, Claims 1 and 10 have been amended to overcome this rejection, and the Examiner appeared to agree that the rejection under 35 U.S.C. §102(e) should be withdrawn. Applicant submits that Claims 1 and 10 are neither anticipated nor rendered obvious by Peavey, and therefore, Claims 1 and 10 are allowable.

Dependent Claims 2-5, 7, 13, 15 and 48 depend from amended Claims 1 and 10 and further define the invention of Claims 1 and 10. Applicant thus submits that Claims 2-5, 7, 13, 15 and 48 are patentable over Peavey for the same reasons as above, and because of the additional limitations recited in each of the claims. Therefore, Applicant respectfully requests the Examiner to reconsider and withdraw the rejection of Claims 1-5, 7, 10, 13, 15 and 48 based on Peavey.

#### **II. § 103(a) Claim Rejections**

In the outstanding Office Action of September 27, 2007, Claims 11 and 16 were rejected under 35 U.S.C. §103(a) as being unpatentable over Peavey in view of Shaw (U.S. 6,171,329).

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Dependent Claims 11 and 16 depend from amended Claim 10 and Claims 11 and 16 further define the invention of Claim 10. For at least the reasons set forth above with respect to Claim 10, Applicant respectfully submit that Claims 11 and 16 are patentable over Peavey in view of Shaw. Claims 11 and 16 are also patentable over Peavey in view of Shaw in view of the additional limitations recited in each respective claim. Therefore, Applicant respectfully requests the Examiner to reconsider and withdraw the rejection of Claims 11 and 16 based on Peavey in view of Shaw.

### **III. New Claims**

By this Amendment, Claims 49-54 have been added. Claims 49-51 depend from Claim 1 and are patentable for the same reasons set forth above with respect to independent Claim 1 in addition to the patentable subject matter recited in the dependent claim. Claims 52-54 depend from Claim 10 and are patentable for the same reasons set forth above with respect to independent Claim 10 in addition to the patentable subject matter recited in the dependent claim. Accordingly, Applicant respectfully requests allowance of the newly added claims.

### **IV. No Disclaimers or Disavowals**

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, the Applicants are not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. The Applicants reserve the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that the Applicants have made any disclaimers or disavowals of any subject matter supported by the present application.

### **V. Co-Pending Applications of Assignee**

Applicant wishes to draw the Examiner's attention to the following co-pending applications of the present application's assignee.

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Serial Number	Title	Filed	Matter Reference
11/584,828	TISSUE OPENING OCCLUDER	10/23/2006	EV3.062DV1
11/607237	TISSUE OPENING OCCLUDER	11/30/2006	EV3.062DV2
11/927448	TISSUE OPENING OCCLUDER	10/29/2007	EV3.062C1
10/419412	SEPTAL DEFECT OCCLUDER	4/21/2003	EV3.058CPC1
10/227773	DEFECT OCCLUDER RELEASE ASSEMBLY AND METHOD	8/26/2002	EV3.059C1
10/930321	RETRIEVABLE SEPTAL DEFECT CLOSURE DEVICE	8/31/2004	EV3.067C1
10/972635	PATENT FORAMEN OVALE CLOSURE SYSTEM	10/25/2004	EV3.079A
10/783783	DEVICES AND METHODS FOR CLOSING A PATENT FORAMEN OVALE WITH A COIL-SHAPED CLOSURE DEVICE	2/20/2004	MVMDINC.060A
10/841880	DEVICES AND METHODS FOR CLOSING A PATENT FORAMEN OVALE USING A COUNTERTRACTION ELEMENT	5/7/2004	MVMDINC.068A

## **VI. Conclusion**

Applicant respectfully submits that the claims are in condition for allowance. Furthermore, any remarks in support of patentability of one claim should not be imputed to any other claim, even if similar terminology is used. Any remarks referring to only a portion of a claim should not be understood to base patentability on that portion; rather, patentability must rest on each claim taken as a whole. Applicant respectfully traverses each of the Examiner's rejections and each of the Examiner's assertions regarding what the prior art shows or teaches, even if not expressly discussed herein.

Applicant respectfully requests that a Notice of Allowance be issued at the earliest opportunity. However, if the Examiner has any questions or concerns, the Examiner is invited to telephone Applicant's attorney of record so that extended prosecution of this application may be avoided.

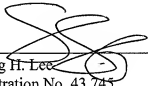
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Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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